IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 522 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NIKHIL BALKRISHNA PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 522 of 1999

MR IM PANDYA for Petitioner No. 1

MR CL SONI for Petitioner No. 1

Mr B D Desai, APP for Respondent No. 1

MR SAURABH J MEHTA for Respondent No. 2

MR JM PANCHAL for Respondents No. 3-5

RULE SERVED for Respondents No. 6-7

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/01/2002

ORAL JUDGEMENT

The present criminal revision has been filed under section 397 read with section 401 of the Criminal Procedure Code, 1973 (for short, 'the Code') challenging the judgment and order recorded by the learned Metropolitan Magistrate, Court No.3 in Crime Register No.I 0230/98.

2. It appears that the present petitioner had filed FIR for offence under sections 120 (B), 420, 424 of IPC against contesting respondent No. 2 to 7. Certain allegations were made against these respondents stating that the respondents obtained police protection and took away certain materials from the place in dispute. The said FIR was registered before Saherkotda police Station in Ahmedabad City bearing No.C.R.I.0230/98 on 12.6.1998. The matter underwent police investigation and at the end of the investigation, the investigating agency submitted a report before the learned Metropolitan Magistrate, Ahmedabad City, stating that no offence was made out and, therefore, 'C' Summary may be granted in favour of the prosecution. The learned Magistrate heard the parties and after considering the papers and arguments, the learned Magistrate directed that 'C' summary as prayed for be granted in the aforesaid matter.

3. Feeling aggrieved by the order of the trial court, the petitioner original informant has preferred this revision application before this court. It has been mainly contended here that though there was sufficient material against the respondents, the investigating police officer had not filed charge-sheet against the contesting respondent and, therefore, the order of the learned Magistrate granting 'C' summary is illegal and perverse and deserves to be quashed and set aside.

4. It is, therefore, prayed that this revision be allowed and the said order be quashed and set aside. On receipt of the aforesaid revision application, rule was issued and in response to the service of rule Mr B D Desai, learned APP appears for respondent no.1-State of Gujarat. Mr Saurav Mehta, learned Advocate appears for respondent no.2 and Mr J M Panchal, learned Advocate appears for respondents no.3 to 5. Respondents no.6 and 7 have been duly served but they have not appeared before the Court.

5. I have heard the learned Advocates for the parties and have perused the papers. It is required to be considered here that the present petitioner had filed a criminal complaint being C.C. No.32/88. The learned

Magistrate had granted 'C' summary. Therefore, the petitioner, herein, filed Criminal Revision Application No.405/1990 in order to challenge the order of the learned Metropolitan Magistrate dated 10.12.1990 granting 'C' Summary as aforesaid. Subject matter of the said Criminal Revision Application No.405/90 and that of the present one are not different. There this Court found that there was a civil dispute between the parties (order dated 19.3.1997) with regard to the possession of the property which is also the subject matter in dispute in this matter. So long as this finding stands, it will not be possible for this Court to take a different view. Therefore, once it is found that the parties are at civil dispute with regard to the possession of the premises in question, the entire matter would take a different shape.

6. Now, this judgment in above matter was considered by the learned Magistrate while deciding the matter before him. This Court had considered the pros and cons of the subject matter in dispute in the said matter (criminal revision application no. 405/90) and ultimately found that the incident in question had taken place on 14.4.1988. The complaint in question was lodged by the complainant on 16.4.1988 and so far no trial had commenced, the complaint was liable to be dismissed in view of the decision recorded in the case of Common Cause, a Registered Society v. Union of India, reported in AIR 1996 SC 1619. In accordance with the observations made in the said judgment, this Court had dismissed the aforesaid criminal revision application of the present petitioner. Having regard to the facts and circumstances of the said revision application and in view of the observations made by this Court in the said revision application, it is amply clear that so long as the findings recorded in the revision application stand unchallenged and unrebutted, it would not be open to this court to take a view different from the view recorded by the learned Magistrate while granting 'C' summary in the aforesaid matter, since the learned Magistrate has almost followed the view of this Court in the said criminal revision application No.405/90.

7. After the above judgment was shown during the course of argument, learned Advocate for the petitioner had sought for time with a view to avail of an opportunity of filing appropriate proceedings before the Supreme Court challenging judgment, order, findings and reasonings recorded in Criminal Revision application no.405/90 (supra). However, when the matter was called out today, learned Advocate for the petitioner today made it clear that the petitioner has not preferred any

proceedings before the Supreme Court against the aforesaid judgment and order, findings and reasonings of this court in the aforesaid revision application. Therefore, the said judgment and order with reasonings and findings stand as on today.

8. Looking to the reasonings and findings recorded in the said matter, it is quite clear that it would not be proper, just or legal for this court to interfere with the findings recorded by the trial court and to disturb the final order passed by the learned Magistrate granting 'C' summary in the said matter, since the learned Magistrate has followed the said judgment of this Court while issuing 'C' Summary.

9. Once it is found that the parties are at civil dispute, the order granting 'C' Summary cannot be treated to be illegal.

10. Even otherwise, this court has revisional jurisdiction and not appellate jurisdiction. Hence the powers, functions and jurisdiction of this court are very limited. It is not open to this court to take a view different from the view of the trial court unless it is found that the view adopted by the trial court is manifestly against the weight of evidence recorded. In other words, it must be shown that the findings and reasonings recorded by the trial court are illegal and perverse and against the weight of evidence recorded. It is not shown that the approach of the trial court was illegal particularly in view of the findings and reasonings recorded by this court in the aforesaid revision and when the learned Magistrate has decided the matter before him on the strength of the findings of the Court in Criminal Revision Application No.405/90. The Revision is therefore, meritless and hence it has to be dismissed.

11. In above view of the matter, this revision is required to be dismissed and it is accordingly dismissed. Rule discharged.

28.1.2002 [D P Buch, J]
msp